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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,507	10/04/2005	David Danvers Crossman	3003-1161	5480
466 7590 02/19/2009 YOUNG & THOMPSON 209 Madison Street Suite 500 ALEXANDRIA, VA 22314			EXAMINER PANI, JOHN	
			ART UNIT 3736	PAPER NUMBER
			MAIL DATE 02/19/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/520,507

**Applicant(s)**

CROSSMAN ET AL.

**Examiner**

JOHN PANI

**Art Unit**

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 8-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/25/08 has been entered.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 10 refers to "opposed latch surfaces", "the lancet latch surface", and "the latch surface of said trigger-releasable latch". The specification does not use this terminology. It is suggested to amend the specification to include this terminology. No new matter may be added.

### ***Claim Objections***

3. Claim 4 is objected to because of the following informalities: In line 3, it is suggested to replace "the direction" with —a direction—, as the former lacks antecedent basis in the claims. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 4, 5, 8, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,628,765 to Morita ("Morita").

6. Morita teaches:

In reference to Claim 1

A blood sampling device comprising: a needle-carrying lancet (86) located within a housing (16) and having a cap (84) releasably attached (see Figs. 13-14) to said lancet adjacent said needle (44), the cap extending to project from an attachment to said lancet through an opening at one end of the housing (Fig. 13) and having at least one locating member (92, 94) fitting into at least one cooperating feature (26) of outer walls of the housing, whereby the cap holds the lancet against movement relative to the housing (col. 10 lines 58-67), the cap being twistable to release the at least one locating member from the at least one cooperating feature and from the lancet (could be twisted while pulling).

In reference to Claim 2

The blood sampling device according to claim 1 (see above) wherein the at least one locating member is a flange or rib and the at least one cooperating feature is a groove or vice versa (Fig. 13).

In reference to Claims 4 and 8

The blood sampling device according to claims 1 and 2 (see above) wherein the lancet is spring-loaded (via 54) to urge the lancet in the direction towards the opening in the housing.

In reference to Claim 5

The blood sampling device according to claim 4 (see above) including a trigger-releasable (58 acts as trigger when pushed) latch (34) to hold the lancet within the housing such that an exposed needle cannot project through said opening until the latch is released by the trigger.

In reference to Claim 10

The blood sampling device according to claim 5, wherein said trigger releasable latch and said lancet have respective opposed latch surfaces (34 and 48/48a, respectively) and cooperable to retain said lancet in said housing until release of said latch (see Figs. 3-4), and said cap is adapted to hold the lancet in a position in which the lancet latch surface is spaced rearwardly of the latch surface of said trigger-releasable latch until said cap is detached from the housing and from the lancet (See Fig. 13).

In reference to Claim 11

A blood sampling device comprising: a housing (16) having an opening (26), a lancet body (86) carrying a needle (44), the lancet body being movably mounted within the housing and arranged so the needle momentarily projects through the opening of the housing upon actuating the blood sampling device, a cap (84) having a first end releasably attached to the lancet body (via 90) and covering a tip of the needle (Fig. 12), the cap extending through the opening of the housing (Fig. 13) to a second end that is releasably attached to the housing by at least one locating member (92, 94) on the second end that fits into at least one cooperating member (outer corner of 26) on an outer wall of the housing, the cap being twistable to release the at least one locating member from the at least one cooperating feature so the cap can be removed from the housing and the lancet body (see Figs. 12-13, could be twisted while pulling), the cap, the housing and the lancet body being arranged to prevent forward movement of the needle relative to the housing prior to removal of cap and actuation of the blood sampling device (col. 10 lines 58-67).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morita.

In reference to Claim 3

Morita teaches the blood sampling device of claim 2 (see above), however Morita does not explicitly teach two flanges fitting into grooves in two opposed sides of the outer walls of the housing. Instead, Morita teaches the outer walls of the housing fitting into opposing grooves in the cap. It is obvious to reverse parts when the reversal would predictably result in serving the same function (see MPEP § 2144.04(VI)(A)). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Morita by making opposing grooves in the walls of opening 26 which would receive flanges 94, as this reversal would predictably result in maintaining the lancet cover on the lancet until use was needed, as taught by Morita.

In reference to Claim 9

Morita teaches the blood sampling device according to claim 3 (see above) wherein the lancet is spring-loaded (via 54) to urge the lancet in the direction towards the opening in the housing.

***Response to Arguments***

9. Applicant's arguments and amendments, see pgs. 7-8 "Objections to the drawings and specification and written description rejection", and amended claim 10, filed 11/25/2008, with respect to the drawings, specification, and claim 10 have been fully considered and are persuasive. The objections of the drawings and specification, and the rejection under 35 U.S.C. § 112, first paragraph of claim 1 have been withdrawn.

10. Applicant's remaining arguments with respect to claims 1-5 and 8-11 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN PANI whose telephone number is (571)270-1996. The examiner can normally be reached on Monday-Friday 7:30 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JP 2/16/09

/Max Hindenburg/



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Supervisory Patent Examiner, Art Unit 3736